

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CP2442
)	EEOC NO.: N/A
<b>NORTH AVENUE FRESH MARKET</b> )	ALS NO.: 10-0046
)	
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon North Avenue Fresh Market's ("Petitioner") Request for Review ("Request") of the Notice of Default issued by the Department of Human Rights ("Respondent")<sup>[1]</sup> in Charge No. 2009CP2442 and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's **NOTICE OF DEFAULT** is **SUSTAINED** on the following ground:

**FAILURE TO FILE A VERIFIED RESPONSE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On February 2, 2009, Robert Riddley ("Complainant") filed a charge of discrimination with the Respondent. The Complainant alleged that North Avenue Fresh Market ("Petitioner") denied the Complainant the full and equal enjoyment of its facilities and services based on his perceived sexual orientation, homosexual, in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act").
2. On February 19, 2009, the Respondent mailed to the Petitioner a Notice of Charge. The Notice of Charge informed the Petitioner that within 60 days from its receipt of the charge, the Petitioner was required to file a verified response to the charge. The Petitioner was further notified that its failure to file a verified response might result in a Notice of Default being issued against it. As of August 2009, the Petitioner had not filed a verified response to the charge.
3. On August 11, 2009, the Petitioner's manager had a telephone conversation with one of the Respondent's investigators. The Petitioner contends that the "frivolousness" of the charge was

---

<sup>[1]</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

discussed at the time. The Petitioner also admits that during this conversation, the investigator told the manager that the Petitioner was required to file a verified response to the charge.

4. On September 24, 2009, the Respondent served the Petitioner with notice of a technical amendment to the charge.<sup>1</sup> This notice was accompanied by a letter informing the Petitioner that it did not have to file a response to the amendment.
5. On October 28, 2009, the Respondent mailed the Petitioner a Notice to Show Cause for its continued failure to file a verified response to the charge. The Petitioner was given fifteen days to show cause for its failure to file the verified response. The Petitioner did not respond to the Notice to Show Cause.
6. On December 21, 2009, the Respondent issued the Petitioner a Notice of Default due to the Petitioner's failure to file a verified response to the Complainant's charge.
7. On January 22, 2010, the Petitioner filed this timely Request. The Petitioner argues that it mistakenly believed it was not required to file a response because it was under the impression the matter had been resolved. The Petitioner states it fell under this mistaken belief because of the August 11<sup>th</sup> telephone conversation, at which time the "frivolousness" of the charge was discussed, and the subsequent receipt of the September 24<sup>th</sup> correspondence, which advised the Petitioner it did not have to respond to the amendment. The Petitioner requests an opportunity to defend against the allegations and attaches to its Request a Verified Response, dated January 22, 2010.
8. In its Response, the Respondent requests that the Commission sustain the Notice of Default. The Respondent argues the Petitioner contumaciously disregarded the Respondent's prior notices, and that the Petitioner has not shown good cause for its failure to timely file a verified response to the charge. The Respondent contends that the Petitioner's argument in support of its Request fails because following the September 24<sup>th</sup> letter, the Respondent sent the Petitioner Notice to Show Cause on October 28, 2009. The Respondent argues that the October 28<sup>th</sup> Notice to Show Cause placed the Petitioner on notice that it was required to file a verified response to the charge.

## **Conclusion**

The Commission concludes that the Notice of Default issued against the Petitioner shall be sustained.

The Petitioner's argument is unconvincing. The charge was served on the Petitioner on February 19, 2009. By the time the Petitioner spoke with the Respondent's investigator in August

---

<sup>1</sup> The charge was amended to correct the Petitioner's name. In the original charge, the Petitioner had been named as "Fresh Meats."

2009, the Petitioner's verified response to the charge was already woefully overdue. Regardless of any discussions regarding the merits of the charge, the Petitioner admits the Respondent's investigator told the Petitioner that it was still required to file a verified response to the charge.

Although the Respondent could have issued the Petitioner a Notice of Default in August 2009, the Respondent apparently gave the Petitioner additional time to file the verified response. Yet the Petitioner continued to do nothing. The Petitioner does not explain why it did not file a verified response between late February 2009 and September 24, 2009, when the Petitioner clearly knew that it was required to do so.

Assuming *arguendo* that the Petitioner was mistaken about its duty to file a verified response following the September 24, 2009, notice regarding the technical amendment to the charge, the Petitioner was put on notice that it was still required to file a verified response when the Respondent served the Petitioner with the Notice to Show Cause on October 28, 2009.

However, the Petitioner took no action in response to the Respondent's Notice to Show Cause. In fact nearly two months passed between the October 2009 Notice to Show Cause and the issuance of the Notice of Default on December 21, 2009. During that time, the Petitioner made no attempt to comply with or otherwise respond to the Respondent's Notices.

Based on these facts, the Commission finds that the Petitioner has not shown good cause for its failure to timely file a verified response to the Complainant's charge. The Petitioner's Request is not persuasive, and the Notice of Default shall be sustained.

Section 8-103(C) of the Act, 775 ILCS 5/8-103(C)<sup>2</sup>, provides in pertinent part that:

*When [...] a notice of default [...] is sustained on review, the Commission shall enter a default order and set a hearing on damages.*

Having herein sustained the Notice of Default, the Commission is now required to schedule the matter for a hearing on damages. The Commission's administrative law judges do not consider arguments as to the merits of the default, or the Respondent's finding of liability as a result of that default.

---

<sup>2</sup> The instant default is issued in accordance with Section 8-103(C) of the Act prior to the amendments to this section, which were made effective February 2, 2010. Section 8-103(C), as amended, applies to charges or complaints that were filed with the Department or the Commission, respectively, on or after February 2, 2010. The underlying charge in this case was filed with the Department of Human Rights prior to February 2, 2010. Therefore the amended provisions do not apply.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Respondent's Notice of Default upon review is hereby **SUSTAINED**.
2. This matter is referred to the Administrative Law Section for a hearing on damages;
3. The recommendation of the Administrative Law Judge assigned to this matter shall be reviewed in the same manner as a Recommended Order and Decision; and
4. This Order is not final and may not be appealed at this time.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

)  
)  
)

**Entered this 25th day of August 2010.**

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini